

Status of the Claims:

Claims 1-28 are pending and presented for examination.

Response to Restriction Requirement:

A. Group Election

The PTO requires an election because allegedly “[t]he inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding technical feature...” Office Action, page 2. The PTO alleges “[t]he technical feature linking the inventions of Groups I-II is a plant promoter. However, this method is anticipated by Phillips *et al.* (U.S. Patent No. 7,365,186). Phillips *et al.* teach a xylem-preferred promoter (claim 6). Therefore this technical feature does not constitute a special technical feature as defined by PCT Rule 13.2, because it does not define a contribution over the prior art.” *Id.* at paragraph bridging pages 2-3.

Applicants respectfully traverse the grounds for this Restriction because the technical feature linking Groups I-II constitutes a special technical feature. While the PTO is correct in its position that the claimed invention generally relates to “plant promoters,” Applicants submit that the instant invention discloses specific promoters from *Populus*, each of which confers cambium/xylem-preferred expression. Any “plant promoter,” as the PTO posits, would not inherently constitute a *Populus* promoter conferring cambium/xylem-preferred expression. Thus, the technical feature common to Groups I-II is more than just a “plant promoter,” as reflected by the enumerated cambium/xylem-preferred promoters recited in the instant claims. For this reason alone, the Restriction is improper and should be withdrawn.

Furthermore, the common technical feature, *Populus* promoters conferring cambium/xylem-preferred expression, constitutes a special technical feature because it defines a contribution over the PTO’s cited art, U.S. Patent No. 7,365,186. Whereas the ‘186 patent allegedly discloses and claims regulatory sequences isolated from one *Eucalyptus COMT* sequence, the present invention provides regulatory sequences from twelve *Populus* genes, each of which confers cambium/xylem-preferred expression.

Applicants provisionally elect with traverse **Group 1** (claims 1-17 and 18-27) and reserve the right to file one or more divisional applications covering non-elected subject matter.

B. Nucleotide Election

The PTO requires Applicants elect a nucleotide sequence for examination because “different nucleotide sequences and amino acid sequences are structurally distinct chemical compounds and are unrelated to one another.” Office Action, page 3.

While Applicants do not agree that the sequences are unrelated, given that the sequences are isolated from Populus and each confers cambium/xylem-preferred expression, Applicants elect with traverse **SEQ ID NO: 2**.


CONCLUSION

Receipt of an initial Office Action on the merits is awaited.

If there are any questions concerning this application, the Examiner is courteously invited to contact the undersigned counsel.

Respectfully submitted,

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By 

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The Commissioner is hereby authorized to charge any additional fees, which may be required regarding this application under 37 CFR §§ 1.16-1.17, and to credit any overpayment to Deposit Account No. 19-0741. Should no proper payment accompany this response, then the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extension is needed for timely acceptance of submitted papers, Applicants petition for such extension under 37 CFR §1.136 and authorize payment of the relevant extension fee(s) from the deposit account.